Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	IB Docket No. 96-261
International Settlement Rates	)	
	)	

PETITION FOR CLARIFICATION OR RECONSIDERATION

MCI Telecommunications Corporation ("MCI"), pursuant to Sections 1.106(a)(1) and 1.429(a) of the Commission's Rules, hereby files a Petition for Clarification or Reconsideration of the Commission's Report and Order in this proceeding.[1]

MCI supports the Commission's efforts to lower above-cost accounting rates by establishing benchmark settlement rates. The Commission has taken an important step to develop a more competitive international services market to the benefit of consumers and businesses worldwide. In one part of its Order, however, the Commission requires existing Section 214 holders with foreign affiliates to negotiate and have in effect a settlement rate at or below the benchmark within 90 days of the effective date of the Order.[2] MCI requests clarification or reconsideration of this condition in limited circumstances.

MCI fully supports the Commission's efforts to lower settlement rates to benchmarks in situations where the foreign carrier is dominant or originates or terminates a significant amount of international traffic. To achieve its goals, however, it is not necessary for the Commission to impose a benchmark condition on foreign-affiliates of currently authorized carriers that are non-

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[1] International Settlement Rates, IB Docket No. 96-261, Report and Order, FCC 97-280 (released August 18, 1997) ("Order").

[2] Id. at ¶ 228.

dominant or do not originate or terminate a significant amount of traffic on the U.S. route. In most instances, these foreign affiliates lack market power, and therefore the ability or incentive to act anticompetitively against unaffiliated U.S. carriers. By requiring these foreign affiliated carriers to immediately reduce their settlement rates to benchmarks puts them at a serious competitive disadvantage vis-a-vis other unaffiliated (and in most cases dominant) foreign carriers. Even though the new entrant would have to settle at the benchmark rate and thus incur reduced inbound receipts, the dominant carrier would be free to continue to collect its above cost accounting rate for the lion's share of international traffic. It would be pure speculation to assume that these smaller carriers could make up the difference by attracting additional traffic otherwise destined for their dominant competitors.

In addition, there are legal impediments to implementing the rule. In some countries only the dominant carrier is authorized to negotiate accounting rates with foreign carriers, and smaller carriers must implement the rate negotiated by the dominant carrier.[3] In these cases, it would be impossible, as a matter of law, for a foreign affiliate to get to benchmarks within 90 days of the effective date of the Order. Thus, the Commission should not require these foreign affiliates to do so. In other countries, rules equivalent to the International Settlements Policy ("ISP") apply, and non-parallel accounting rates are prohibited.

To mitigate these concerns and what we believe are unintended consequences, MCI proposes an alternative rule that utilizes the standard ("the 25 percent standard") adopted in the

[3] For example, by regulation, Telmex is the only Mexican carrier authorized to negotiate accounting rates with U.S. carriers.

Commission's Flexibility Order.[4] Specifically, the Commission should require existing Section 214 holders with foreign affiliates to negotiate and have in effect settlement rates at or below the relevant benchmark adopted in the Order, *where the traffic on the route between that Section 214 holder and its foreign-affiliate is greater than 25 percent of the total inbound or outbound traffic on the route.*[5] If the Commission or any other interested party demonstrates that the outbound or inbound traffic between the U.S. carrier and its foreign-affiliate in the affiliated market has increased above the 25 percent threshold, the Commission should require that the foreign-affiliate lower its settlement rate to the relevant benchmark within 90 days of such a finding.

In addition, in instances where the existing 214 carrier or its foreign affiliate controls bottleneck services or facilities on either the U.S. or foreign end of the route the Commission could require affiliates to comply with the 90 day requirement regardless of whether or not they meet the 25 percent threshold.[6]

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[4] Regulation of International Accounting Rates, Phase II, Fourth Report and Order, 11 FCC Rcd 20063 (1996) ("Flexibility Order"). The Commission concluded that it would require carriers requesting approval of alternative accounting rate arrangements to demonstrate that the terms of the arrangement are not unreasonably discriminatory, or to offer such terms on a nondiscriminatory basis to competing carriers, if the arrangement affects more than either twenty-five percent of the outbound traffic or twenty-five percent of the inbound traffic on the relevant route. See Id. at ¶ 45. The Commission stated that a 25 percent threshold would provide a reasonable balance between its goal of encouraging accounting rate flexibility while limiting the potential anticompetitive effect of any one agreement and the ability for large carriers to obtain more favorable terms and conditions than their smaller competitors. Id. at ¶ 46.

[5] Such a rule would comport with U.S. international trade obligations because it would be narrowly tailored to address those circumstances in which there would be a significant risk of competitive distortion in the U.S. international services market.

[6] "Bottleneck services or facilities" are those that are necessary for the delivery of international services, including inter-city or local access facilities, on each end. See, e.g., Market Entry and Regulation of Foreign-Affiliated Entities, Report and Order, 11 FCC Rcd 3873, at ¶ 12, fn. 12.

If the Commission decides not to adopt the proposed 25 percent threshold, the Commission should exempt all existing authorized carriers from the Section 214 benchmark condition, except where such carriers or their affiliates control essential bottleneck facilities on either end of a route. At the very minimum, the Commission should make clear that it will entertain waivers of this requirement where it could not be implemented without violating foreign laws or regulations.

MCI hereby requests that the Commission clarify or reconsider its Order in the manner set forth in this petition.

Respectfully submitted,

MCI TELECOMMUNICATIONS CORPORATION

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September 29, 1997

CERTIFICATE OF SERVICE

I, Damion S. Hutchins, do hereby certify that a copy of the foregoing Petition for Clarification or Reconsideration of MCI Telecommunications Corporation was hand delivered on this 29th day of September, 1997 to the following:

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